

# Glossary of Common Legal Terms

## A

**Absentia** - A proceeding when the defendant is not present.

**Acknowledgment** – A formal declaration of the validity of a document, before a qualified officer (e.g., Clerk), which is then certified by that officer

**Acquit** - act of freeing a person from a criminal charge by means of a verdict or other decision

**Action** - a civil judicial proceeding

**Adjournment** - a temporary postponement of judicial proceedings

**Adjudicate** - to decide a case by hearing or trial

**Adversary** - an opponent.

**Affiant** - one who swears to a notarized affidavit

**Affidavit** - a sworn written statement that is notarized

**affidavit of service** - an affidavit certifying the service of a legal document

**affirmation** - a declaration under penalty of perjury that something is true

**affirmed** - upheld, agreed

**allegation** - a statement made in a pleading that the party expects to prove

**allege** - to assert a fact in a pleading

**amend** - to change

**answer** - a written response by a defendant, admitting or denying allegation(s) made by a plaintiff in pleading

**appeal** - review by an appropriate higher court of a lower court's decision

**appearance** - the participation of a party summoned in an action, either in person or by an attorney

**appellant** - a party who initiates an appeal to a higher court

**appellee** - the adversary or party against whom the appeal is taken

**Arraign** - Arraignment of an accused consists of a formal reading of a criminal charging document in the presence of the defendant to inform the defendant of the charges against them. The accused is expected to enter a plea in response.

**Arrest** - To take a person into custody by legal authority in order to investigate or prevent a crime.

**Attachment** - The act or process of taking, apprehending, or seizing persons or property, by virtue of a writ, summons, or other judicial order, and bringing the same into the custody of the law.

## **B**

**Bail** – The cash or security posted to procure the release of a person from legal custody by a written agreement, insuring the future attendance of the defendant in court.

**Bench trial** – A trial without a jury where the judge decides the facts and the law.

**Bill of particulars** – Upon request of the adverse party, the claimant prepares a written statement further clarifying the details of the demand or/or charges alleged in a pleading.

**Bond (supersedeas)** – The bond set by a court upon appeal of a case which is posted with the Clerk of Court to ensure payment to the opponent if the appeal is unsuccessful.

**Bond (surety)** - A written agreement binding the parties to payment of a debt, conditioned, however, that the payment of the penalty may be avoided by the performance of certain acts by one or more of the parties.

## **C**

**Capias** - A writ charging the offender with a violation of a court order or court process of contempt of court and which directs a sheriff or other officer to take defendant into custody.

**Civil action** - A case brought for determination enforcement or protection of a private right, redress, or prevention of a wrong. It is not a criminal action.

**CCRE** - Central Criminal Records Exchange; an abbreviation.

Complaint – civil – the initial pleading in an action that formally sets forth the allegations and legal basis on which the demand for relief is premised.

**Complaint - criminal** - A charge brought before a judicial officer having jurisdiction, that a person named has committed a specified offense.

**Commonwealth's Attorney** – It is the title of the publically elected officer in each county or city, who conducts criminal prosecutions on behalf of the state.

**Contempt of court** - Any act or omission which is calculated to embarrass, hinder, obstruct or interfere with the court in administration of justice, or which is calculated to impair its authority or its dignity.

**Continuance** - A postponement of further proceedings in a hearing or trial until a later date.

**Contract** - A legally enforceable agreement between two or more persons or parties whether made orally or in writing.

**Contributory Negligence** - A legal doctrine which states that, in a civil action based on negligent conduct, the plaintiff may not recover from the defendant if the plaintiff was also negligent.

**Conviction** – It is a judicial finding that a person is guilty of a criminal charge.

**Counterclaim** - A claim made by a defendant in opposition to the claim made by the plaintiff within a lawsuit.

**Court order** – It is a command or mandatory direction of a judge which is made during a case. Also includes a command of the judge which establishes courtroom or administrative procedures.

**Crime** – An act in violation of penal law; an offense against the state classified either as a felony or misdemeanor.

**Cross-claim** - A claim which is brought by a defendant against a third party not originally sued by the plaintiff in the same action or against a co-defendant or both concerning matters in question in the original action, and not against persons on the opposite side of the lawsuit.

**Cross-examination** - The examination upon a trial or hearing, or upon taking a deposition, of a witness produced by the other side.

**Custody** - The detainment of a person by virtue of lawful process or authority; actual imprisonment.

**Custody case** - In juvenile and domestic relations district court or circuit court, the type of proceedings in which the court determines which parent, other adult or agency shall have the legal and physical control over a child.

## **D**

**Damages** - Money awarded by the court to a person harmed by the unlawful or negligent act of another person or legal entity.

**Decree** - An order issued by a Circuit Court in an equity matter.

**Defendant** - The party against whom relief or recovery is sought in a civil action or suit. The party accused of a crime in a criminal case.

**Deferred sentence** – A sentence that is postponed to a future date so that the defendant may fulfill certain court ordered conditions, thus the case can then be dismissed and so not become part of the defendant's criminal record.

**Default** – A failure to respond to a lawsuit with the defined time limit.

**Demurrer** - A motion to dismiss a case because the claim does not state a legally remedial cause of action.

**Deposition** - The testimony of a witness taken upon oral examination, after notice to the adverse party, other than in open court. Depositions are used to examine potential witnesses and take discovery to possibly be used later in court.

**Deputy clerk** – This is a subordinate employee to the clerk who is empowered to act in the place of the clerk in doing the official business of the court.

**Detention** - The holding of a person in custody or confinement.

**Direct Examination** - The first questioning of a witness by the party who called the witness.

**Disclaim** - To refuse or deny.

**Discovery** - Procedures by which one party to a lawsuit may investigate or gather information relevant to the case which is held or known by the other party.

**Dismissal** - An order disposing of a case without trial.

**Disposition** - Determination of the sentence or final settlement of a case following judgment.

**Divorce** - Legal dissolution of a marriage by the court. Divorce cases are handled by circuit courts.

**Docket** - A list of all cases and actions scheduled to be heard by a court, whether or not the matter is actually heard in a court on a particular day.

**Domicile** – One's true, fixed permanent home or place of habitation.

## **E**

**Elements of a crime** – These are specific factors that define a crime, each of which must be proven beyond a reasonable doubt in order to result in a conviction.

**Eminent Domain** - The power of the government to take private property for public use through condemnation with compensation.

**Escrow** - Money or other property held upon agreement of the parties by a neutral third party, and released upon fulfillment of conditions of the agreement.

**Estate** - The property owned by a person, in his or her name, at the time of the person's death. Estates and wills are under the exclusive jurisdiction of circuit courts in Virginia.

**Eviction** - The legal process by which a landlord recovers the possession of land or a dwelling from another.

**Evidence** – Testimony or exhibits presented to a court to prove or disprove material facts in a case.

**Executor** - A person named in a will, or appointed by the court, to administer the estate of a deceased person.

***ex parte*** - A judicial proceeding, order, injunction, etc., on behalf of one party only, and without notice to, any person adversely interested.

**Expungement** - A process by which a record or a portion thereof, is formally erased or removed.

**Extradition** - The surrender by one state to another of an person accused or convicted of an offense outside its own territory and within the territorial jurisdiction of the other, which, being competent to try and punish him/her, and demands the surrender.

## F

**Felony** - A crime punishable by death or confinement in the penitentiary.

**Fiduciary** - A person who has a legal relationship of trust and confidence, and an ethical duty to act in the best interests of another person, such as a guardian or trustee.

**Forfeiture** – A deprivation or loss of property in penalty for the nonperformance of some obligation or condition.

## G

**Garnishment** - A statutory post-judgment proceeding in which a third party (called the garnishee) who holds the judgment debtor's property, is required to surrender such property, money or credits (to the extent of the judgment) to the court or sheriff for application against the judgment awarded against the judgment debtor.

**Grand Jury** - A special type of jury assembled to investigate whether evidence against a defendant warrants that an indictment be issued. In Virginia, grand jury proceedings are supervised by circuit courts.

**Guardian *ad litem*** - A lawyer appointed to defend or prosecute a case on behalf of a person who is incapacitated by minor status or other condition.

**Guardianship** – A legal relationship created by will or by order of the court for one person to be responsible for the care and management of the person and property of another who is incompetent or a minor.

**Guilty** – A finding that one is responsible for committing a crime, either by acknowledgement through pleading, or as a result of trial.

## H

***Habeas corpus*** - A writ commanding that a prisoner held in custody be brought before the court for a determination of whether the prisoner is detained unlawfully.

## I

**Incarcerate** – to imprison or confine in a jail or penitentiary.

**Indictment** - A formal accusation by a grand jury that charges a person with a violation of the law. In Virginia, indictments are used in circuit court only.

**Indigent** - An impoverished person, or one who has insufficient property to furnish him a living nor anyone from whom he/she is legally entitled to support.

**Insanity Plea** - A claim by a defendant that they lacked the mental capacity to tell right from wrong when they committed a crime and so should not be held responsible for it.

**Interpreter** - a person sworn to translate oral or written foreign language into English for a judicial proceeding.

**Interrogatories** - A set of series of written questions drawn up by one party for the purpose of being asked of an opposing party, a garnishee, or a witness or other party to be answered in writing and under oath.

**Intestate** - dying without having a valid will.

## **J**

**Jail** - A place where people awaiting trial or people sentenced to shorter terms of confinement for misdemeanors are confined.

**Judgment** - A final decision and order of the court.

**Judgment creditor** - The litigant who wins an award against some other person in a civil suit.

**Judgment debtor** - The litigant against whom an award is made in a civil suit.

**Jurisdiction** - The legal authority of a court or other governmental agency to adjudicate cases within a geographic area (personal jurisdiction) and adjudicate specific types disputes brought before it (subject matter jurisdiction).

**Jury** - A body of persons legally selected from the community to hear evidence and decide a criminal or civil case. In Virginia, juries are used only in circuit court.

**Juvenile** - A person under 18 years of age who is not an emancipated minor.

## **L**

**Legal Aid** - Legal services are available in some areas to persons who fall within the requisite financial guidelines. Legal aid offices handle only civil matters. In Northern Virginia, these services are offered by Legal Services of Northern Virginia.

**Lesser Included Offense** - Any less serious crime that includes some of the same elements as the original charge and which does not include any additional elements not included in the greater offense.

**Levy** - A seizure; to confiscate specific property of the debtor and place it under the control of the sheriff until it can be sold and applied to the payment of debt upon a writ of execution.

**Lien** - A legal claim or security or encumbrance upon another person's property as security for a debt.

**Litigant** - A party to a lawsuit; one engaged in litigation.

## **M**

**Magistrate** - A judicial officer with limited powers who is assigned certain pre-trial matters such as issuing warrants, determining bail, issuing emergency protection orders and temporarily committing people to mental institutions.

**Mechanic's lien** - A security interest in a title to real property, for the payment of workers that have performed work or supplied materials that have improved the property.

**Mediation** - A form of alternative dispute resolution where a neutral third party helps the parties reach a settlement.

**Minor** - An infant or person who is under 18 years of age, and so has not reached the age of legal competence.

**Misdemeanor** - Offenses punishable by of \$2,500 or less, or being jailed for a term not exceeding one year, or a combination of fine and jail within these limits.

**Mistrial** - An invalid trial which is caused by an error or an inability of a jury to reach a verdict. When a mistrial is declared, the trial must then start over from the beginning.

**Mitigating Factor** - A fact or circumstance associated with a criminal act that, while not an excuse or justification, may reduce the degree of blame and result in a lighter sentence.

**Modification** - A minor change, addition, or deletion that alters but does not change the basic substance of an agreement or document.

**Motion** - An oral or written request made by a litigant or other person connected with a case for a ruling or order.

**Motion for judgment** - A complaint filed by a plaintiff which sets forth the basis of plaintiff's civil claim and request's judgment in plaintiff's favor.

## **N**

**Negligence** - Failure to exercise that degree of care which a reasonable person would have exercised under the same circumstances which results in injury to another.

**Next Friend** - A person who without formal appointment by a court and who is not a party to the suit, acts for the benefit of a minor or a person who is not legal competent.

**Nolle prosequi** - It is a formal entry on the record, by the prosecuting attorney in a criminal case, by which he declares that he will not prosecute the case further.

***Nolo contendere*** – It is a plea in which the defendant does not contest the charge, but does not admit guilt either.

**Notary** - A public officer whose function it is to administer oaths; to attest and certify, certain classes of documents; to take acknowledgments, and certify the same.

**Not Guilty** - A verdict in a criminal case wherein the judge or jury determines that the Commonwealth has not proven that the defendant is guilty of a charge beyond a reasonable doubt. Also the plea that may be made by a defendant to assert that he/ she is not guilty and to demand that the Commonwealth prove its case.

**Notice** - Formal notice to the party being sued that plaintiff has filed a civil lawsuit, usually delivered via a sheriff or process server. Also, it is notice of any legal proceeding or determination.

## O

**Objection** - A protest or exception made by a party against an action by the opposing party, often to prevent the introduction of evidence. It is either sustained or overruled by the judge.

**Offense** – A violation of a local ordinance or state statute.

**Ordinance** - The law adopted by the legislative body of a local government.

***Ore tenus*** – an oral hearing or pleading presented before a judge.

**Original jurisdiction** – The authority of a tribunal to hear and decide a case before appellate review.

## P

**Parole** - The supervised, conditional release of a prisoner. If prisoner abides by the conditions, he/she will not have to serve the rest of the sentence, but, if he/she does not, he/she will be returned to serve unexpired time.

**Party** - A person, business, or a legal organization such as a partnership or corporation, or governmental agency involved in prosecution or defense of a legal proceeding.

**Perjury** - The criminal offense of knowingly giving a false statement under oath.

**Personal recognizance** – In criminal proceedings, it is the pretrial release of a defendant from jail or arrest by a judicial officer, upon a promise to appear in court without the necessity of posting bond. Additional conditions may be imposed.

**Petition** - A formal written request to a court for redress on a matter of injustice.

**Plaintiff** - A person or other legal entity that files the complaint in a lawsuit; also sometimes called the complainant.

**Plea** – Defendant's statement either as to his guilt or innocence to the charge made against him.



**Pleadings** - The written statements by the parties to a lawsuit of their facts and law relevant to the case.

**Power of Attorney** - Authorization given by one person allowing another to act as an agent on his or her behalf.

**Precedent** - A previously decided case that controls the decision of similar future cases; also called common law.

**Preliminary hearing** - The hearing given to an accused which is held by a judge, to ascertain whether there is probable cause to force the accused to stand trial on the felony charge in the circuit court. It is often described as the "trial before the trial".

**Preponderance of the evidence** - Greater weight of evidence, or evidence which is more credible and convincing than evidence offered against it. It is the standard for evidence required to prevail in most civil actions.

**Probable cause** – The evidence required to warrant a reasonable ground for belief in the existence of facts warranting that a crime has been committed and the suspect has committed it.

**Probate** - Probate is the procedure where a Will is admitted to record in the Probate Department of the Clerk's Office of the Circuit Court and/or Probate is the process of appointing and qualifying a person as Executor or Administrator of an estate. Probate can also be defined as the entire process of administering an estate.

**Probation** – A procedure allowing a person convicted of some offense to remain free under a suspended or deferred jail sentence during good behavior and generally under the supervision or guardianship of probation officer together with other conditions the court may impose.

**Public Defender** – A court appointed attorney for defendants who are declared to be indigent.

## Q

**Quash** - The action of a court to vacate, or void a summons, or other request on legal process, such as a subpoena.

## R

**Reasonable Doubt** – Such a doubt as would cause a reasonable person to hesitate to act, beyond which the Commonwealth must prove its accusations in order to obtain a criminal conviction.

**Recognizance** – A recorded obligation entered into by an accused before a court, in which the accused pledges to act with condition to appear in criminal court as required, to keep the peace, to be of good behavior, and not to depart from the Commonwealth.

**Record** – All of the documents and evidence in a case, including transcripts of oral proceedings.

**Release** – In criminal law, it means a discharge from confinement or custody; in civil law, it means a discharge from an obligation, such as a debt.

**Remand** – To sending a case back to the same trial court out of which it came for purpose of having some action taken on it there in accordance with the appellant courts ruling.

**Restitution** - The act of making good through financial reimbursement or giving equivalent for any loss, damage or injury to the victim.

**Return of service** - The act of a sheriff or other ministerial officer, in delivering back to the court a writ, notice, or other paper, which he was required to serve or execute, with a brief account of his doings under the mandate, including the time and mode of service or execution, or his failure to accomplish it, as the case may be.

**Revocation** – Act of termination, cancellation, or nullification of some power, authority, legal document or thing granted.

**Satisfaction of Judgment** – The payment of all monies that a party owes pursuant to the judgment of a court.

**Sealed** - A file that is physically closed to public review. Also, it may refer to a document containing a seal of the Clerk of Court, signifying its authenticity.

**Search warrant** – A written order issued by a judicial officer in the name of the state, directing a law enforcement officer to conduct a search of a specified area, for a specific piece of evidence, to aid an official investigation.

**Seizure** – It is to take property into possession through legal process or force.

**Sentence** - The punishment formally pronounced by the judge upon the defendant after his conviction in a criminal prosecution.

**Service** – The delivery of a legal document which may require an appearance in court, by a person who is officially authorized by law to do so. Unless waived, service is required for complaints, summonses, or subpoenas, or to otherwise notify a person of a lawsuit or other legal action taken against him/her.

**Show Cause Order** – A Court Order requiring that a person appear before the court and explain why a proposed action should not be taken against them.

**Show cause rule** –An order made by the court upon a motion under the oath or affirmation of the applicant, commanding another party to appear and present to the court such reasons and considerations as one has to offer why the recipient should not be punished for violating a court order or legal process or for contempt of court.

**Subpoena** - A process directing a witness to appear before a certain court at a certain time and give testimony.

**Subpoena *duces tecum*** - A process directing a witness who has in his possession or control some documents or papers relevant to the pending controversy, to produce it at or before the trial.

**Suit in detinue** – It is a civil case in which the plaintiff seeks to recover specified personal property from a defendant.

**Summons** - A summons is a legal document requiring a person to appear in court at the date and time stated on the summons.

**Surety** - One who signs a bond and guarantees to pay money or to do any other act in the event that another fails to perform as promised, such as make a court appearance.

## **T**

**Tenant Assertion and Complaint** - A complaint filed by a tenant against a landlord asserting that the landlord has failed to fulfill certain duties defined by statute or common law.

**Transcript** - A written, word for word record of what was said in a legal proceeding.

**Trial *de novo*** - A new trial or retrial had in a circuit court which is conducted as if no trial whatever had occurred in the district court.

## **U**

**Unlawful detainer** – The unjustified occupation of real estate by a tenant whose original entry was with the owner's consent, but when the consent was withdrawn and/or the right of occupancy ended, the tenant refused to leave the premises.

## **V**

**Venue** - The legally proper place within which a court may hear and determine the case.

**Verdict** - The formal decision or findings made by a judge or a jury on a matter submitted to them in a trial.

## **W**

**Waive** - To voluntarily give up a known right or privilege.

**Warrant in Debt** – A civil suit by a creditor to recover money from a debtor.

**Warrant in Distress** - A form used in general district court to assert a claim to property held by another, as satisfaction of a debt or in lieu of performance of an obligation.

**Will** - A legal document which disposes of a person's property upon their death. In Virginia, Wills are handled by circuit courts.

**Witness** – A person who testifies as to what he/she has seen, heard or otherwise experienced and who is not a party to the action.

**Writ** - A written order issuing from a court commanding the performance of a specified act by a specified person, or giving authority and commission to have it done.

**Writ of Possession** - This is the writ of execution which commands the sheriff to return property to the possession of the person who prevailed in an unlawful detainer action or personal property in a detinue action.

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